

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CULVER CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011020121

ORDER DENYING MOTION FOR
STAY PUT

On January 31, 2011, Student filed with the Office of Administrative Hearings (OAH) a Motion for Stay Put (motion) concurrently with a due process hearing request (complaint). District filed an opposition to the motion (opposition) on February 3, 2011. Student filed an answer to District's opposition on February 4, 2011. For the reasons discussed below, the Student's motion is denied.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); 56505, subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

DISCUSSION

Student's motion argues that Student has no signed IEP, but instead Student relies upon a 2005 settlement agreement between District and Student (Agreement) as the basis for Student's stay put. The Agreement does not provide for stay put in the event of a future dispute, but it does reference services for "each calendar year." Student was placed in a preschool at the time of the Agreement. However, based upon the allegations of the complaint, Student is allegedly no longer at that preschool but was, instead, privately placed by her parents in or about 2007, and was receiving services from private providers, with an unspecified amount of reimbursement from District until November 15, 2010. Neither party references any subsequent agreement for placement and services following the Agreement, yet OAH files show that the parties entered a settlement agreement in 2008 in OAH case number 2007080649.

Student's motion for stay put is not supported by a declaration under penalty of perjury that offers facts establishing exactly what Student's last agreed upon and implemented placement and services were, or upon what basis the most recent services were provided. District similarly failed to support its opposition by providing a declaration under penalty of perjury with facts supporting its position that the Agreement should not be stay put. Instead, District argues that stay put is not applicable because Student was privately placed.

Given the age of the Agreement, its reference to preschool, and the existence of a subsequent settlement agreement, Student has not met her burden of establishing that she is entitled to stay put under the Agreement. The motion must be denied without prejudice to Student filing another motion for stay put that provides sufficient facts, i.e., declarations under penalty of perjury and/or documents showing what the most recently agreed to and implemented placement and services were. District should also submit evidence, with declarations under penalty of perjury if District files an opposition.

ORDER

Student's motion for stay put is denied without prejudice. Student may file a new motion, which must be supported by a declaration of facts that identify Student's current placement and services and what the most recent agreed upon placement and services were prior to January 31, 2011 when she filed her complaint. District must also support its opposition, if any, with a declaration under penalty of perjury.

Dated: February 9, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings